

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
San Antonio (KRRT-TV) Licensee, Inc.)	Facility I.D. No. 51518
)	NAL/Acct. No. 0741420044
Licensee of Station KMYS(TV) ¹)	FRN: 0007567738
Kerrville, Texas)	

FORFEITURE ORDER

Adopted: April 20, 2010

Released: April 21, 2010

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”) we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to San Antonio (KRRT-TV) Licensee, Inc. (“Licensee”), licensee of Station KMYS(TV), Kerrville, Texas (“Station”), for its willful and repeated violation of Section 73.670 of the Commission’s Rules (“Rules”) by failing to comply with the limits on commercial matter in children’s programming.²

II. BACKGROUND

2. On March 27, 2006, Licensee filed an application to renew the license of the Station, File No. BRCT-20060327AGB (“Application”). Section IV, Item 5 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that it has complied with the limits on commercial matter in children’s programming specified in Section 73.670 of the Rules. Licensee indicated “No” to that certification, and reported two conventional overages in an Exhibit. Licensee also acknowledged that it aired a commercial containing an image of the Scooby Doo character during the “Scooby Doo” program.

3. Licensee also stated that on September 24, 2002, the Station aired a commercial for the Gameboy Advance E-Reader during the “Pokemon” program. According to Licensee’s description, three “Pokemon” game cards were shown for approximately 1.04 seconds. Licensee also indicated that the “Pokemon” game cards were partially hidden and only the letters “MON” were identifiable. Licensee stated that the “Pokemon” characters were not identifiable and were not verbally identified during the commercial. Licensee maintained that the *de minimis* appearance of these cards could not have confused the viewer and that this occurrence does not violate the children’s programming commercial limits rules. Licensee described the corrective measures taken subsequently to prevent future violations.

4. On June 11, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of eight thousand dollars (\$8,000) to Licensee for its violations.³ In the NAL, the Bureau found that the Station’s broadcast of material that exceeded the children’s television commercial

¹ On June 19, 2006, the Station’s call sign was changed from KRRT(TV) to KMYS(TV).

² 47 C.F.R. § 73.670.

³ *San Antonio (KRRT-TV) Licensee, Inc.*, 22 FCC Rcd 10690 (MB 2007).

limits on four occasions, including two program-length commercials, constituted an apparent willful and repeated violation of Section 73.670. On July 11, 2007, in response to the NAL, The CW Network, LLC (“CW”), The WB Television Network (“WB”), and Sinclair Broadcast Groups, Inc. (Sinclair) on behalf of the Station, submitted a Letter requesting that the Bureau reconsider its findings and conclude that the September 24, 2002 Pokemon Episode was not a program-length commercial, and modify the forfeiture accordingly (“Letter”). Further, CW, WB, and Sinclair request that if the Bureau finds that the Pokemon Episode was not a program-length commercial, that the Bureau also find that no host-selling occurred.⁴

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission’s *Forfeiture Policy Statement*.⁷ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁸

6. In the Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children’s programming, and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a “program-length commercial”).⁹ In addition, the Commission reiterated its long-standing policy against “host-selling,” *i.e.*, “the use of program talent to deliver commercials,” including “endorsements or selling by animated cartoon characters as well as ‘live’ program hosts.”¹⁰

7. CW, WB, and Sinclair argued that the September 24 2002 incident did not constitute a program-length commercial because no “Pokemon” characters appeared in the commercial and the commercial for the Gameboy Advance E-Reader did not promote a product related to the “Pokemon” program.¹¹ Specifically, CW, WB, and Sinclair asserted that the only product promoted in the Gameboy commercial was the Gameboy Advance E-Reader. As part of the portrayal of the Gameboy Advance E-Reader, the Gameboy commercial “briefly showed a special game card with the letters ‘mon.’ The word

⁴ In view of the determination reached in this Order, we dismiss this request as moot.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ *Children’s Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

¹⁰ *Id.* at 2127 n. 147, 6 FCC Rcd at 5097; *see also Action for Children’s Television*, 50 FCC 2d 1, 8, 16-17 (1974).

¹¹ In their Letter, CW, WB, and Sinclair stated that the Gameboy Advance E-Reader is a device that lets users swipe a special card in order to “upload” a game or other information to the Gameboy Advance, a handheld video game console. According to CW, WB, and Sinclair, “[o]ne set of available special cards is for a game based on Pokemon creatures.”

“Pokemon”, however, was not shown or stated aloud” during the commercial. The “fleeting” appearance of these letters would not sufficiently identify the “Pokemon” program to the child audience, argued CW, WB, and Sinclair. Since the commercial promoted a product not related to the “Pokemon” program, the “Pokemon” program did not constitute a program-length commercial.

8. We disagree that the Station’s broadcast of the commercial for the Gameboy Advance E-Reader does not constitute a program-length commercial. The Commission has consistently held that where a commercial announcement is primarily for a product otherwise unrelated to a program, but that announcement also includes references to or offers of products which are related to the program, then the broadcast of that commercial announcement during the program to which the included products relate will render that program a program-length commercial.¹² CW, WB, and Sinclair indicated that one set of available cards to be used with the Gameboy Advance E-Reader, is for a game based on Pokemon creatures. According to CW, WB, and Sinclair, portions of three of these special Pokemon cards were shown during the commercial. We believe that the “Pokemon” game cards shown in the Gameboy commercial relate to the “Pokemon” television program that has the same title. Moreover, we believe that, in the context of the cognitive abilities of young children, there is the potential for confusion between the Gameboy commercial and the “Pokemon” program regardless of whether any “Pokemon” character is depicted given the image of a “Pokemon” game card contained in the commercial and the consequent likelihood that children may associate it with the program, which bears the same title.

9. CW, WB, and Sinclair contended that the partially obscured Pokemon name and the “brief appearance” of the “Pokemon” game cards render this appearance so insignificant that it could not possibly have created confusion in the mind of any child viewer. However, it is well-established that the determination as to whether a particular program is a program-length commercial is not dependent on the duration of the appearance of the program-related product in the commercial announcement. The Commission has stated on numerous occasions that, where a commercial announcement includes a product related to the program in which the commercial is broadcast, then the program is a program-length commercial regardless of the duration of the appearance of the program-related product in the commercial.¹³

10. We have considered the Letter submitted by CW, WB, and Sinclair and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that San Antonio (KRRT-TV) Licensee, Inc. willfully¹⁴ and repeatedly¹⁵ violated Section 73.670 of the Rules, and that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture

¹² See, e.g., *Max Television of Syracuse, L.P. (WSYT(TV))*, 10 FCC Rcd 8905 (1995); *Scripps Howard Broadcasting Co. (KNXV-TV)*, 9FCC Rcd 2547 (1994); *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (1994); *Quad Cities Television (KLJB-TV)*, 9 FCC Rcd 1711 (1994).

¹³ *UTV of San Francisco, Inc. (KBHK-TV)*, 10 FCC Rcd 10986, 10988 (1995); see also *WPIX, Inc.*, 14 FCC Rcd 9077 (MMB 1999) (commercial for “Spirit of Mickey” home video showing brief image of Donald Duck on cover of video aired during “Quack Pack” program); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (1995), *aff’d*, 13 FCC Rcd 10099 (MMB 1997) (commercial for a fast food restaurant promoting a trip to Disney World as a contest prize contained a brief image of Goofy and aired during the program “Goof Troop”).

¹⁴ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

¹⁵ Section 312(f)(1) of the Act defines “repeated” as “the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

amount.

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁶ that San Antonio (KRRT-TV) Licensee, Inc., SHALL FORFEIT to the United States the sum of eight thousand dollars (\$8,000) for willfully and repeatedly violating Section 73.670 of the Commission's Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

13. San Antonio (KRRT-TV) Licensee, Inc.'s request for full payment of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁸

14. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to San Antonio (KRRT-TV) Licensee, Inc., Pillsbury Winthrop Shaw Pittman, LLP, 2300 N Street, N.W., Washington, D.C. 20037-1128, and to its counsel, Kathryn R. Schmeltzer, Esquire, Pillsbury Winthrop Shaw Pittman, LLP, 2300 N Street., N.W., Washington, D.C. 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: The CW Network, LLC
The WB Television Network
Sinclair Broadcast Groups, Inc.
Kathleen Q. Abernathy, Esq.

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.